

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 21, 2014

In the Matter of R. R. WILLIAMS, Minor.

No. 320120
St. Clair Circuit Court
Family Division
LC No. 12-000174-NA

Before: BOONSTRA, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Respondent mother appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We reverse and remand.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The trial court assumed jurisdiction over the child in June 2012 after a petition was filed alleging respondent's past involvement with Children's Protective Services (CPS) because of instability in housing and income and domestic violence perpetrated by the child's father. Respondent was given a treatment plan, which required her to maintain income and housing as well as participate in various services. By April 2013, respondent had completed all her required services. At that time, the parents were residing together in an appropriate home. Although respondent was not working, the father, David Williams, was employed. The minor child was returned to her parents' care with Department of Human Services monitoring in place.

Carol Yelinek, respondent's foster care case manager, made a home visit less than two weeks after the child was placed back in the home in April 2013; she discovered that respondent had separated from the child's father, and that she and the child had moved out of the family home three days earlier. Both parents met with Yelinek and it was agreed that respondent would remain in the family home and watch the child during the day, and then leave at night with the child remaining in the home with Williams. However, respondent apparently continued living in the home.

In July 2013, following another incident of domestic violence in the home, the court removed the child from respondent's care again because of continued domestic violence between

respondent and the father, as well as respondent's association with "undesirable" individuals. During this latest incident, Williams hit respondent, pulled her out of the bathtub, and threw her out of the house. A termination petition was filed shortly thereafter, alleging that respondent had inconsistent and inappropriate visitation after her child's latest removal. The petition further alleged that respondent failed to maintain consistent employment during the proceedings, associated with persons with criminal and CPS histories, and failed to benefit from services.

After the July 2013 incident, respondent went to a domestic violence shelter and then moved out of the family home. She moved in with a friend and then obtained her own two-bedroom apartment in September 2013. Respondent reported the incident to the police, and Williams was arrested and convicted of domestic violence and placed on probation. Respondent participated in the criminal proceedings against Williams.

A termination hearing was held on December 11, 2013.¹ Petitioner's only witness was Yelinek. Respondent testified and also presented the testimony of several workers who provided services to her while this case was pending.

Regarding domestic violence, respondent testified that she completed a Healthy Relationship class in September 2012, and domestic violence and anger management classes in November of 2012. Respondent also worked on domestic violence and relationship issues in therapy sessions with her therapist, Kelly Pavel, from August 2012 through March 2013. Respondent explained how she benefited from these services; for example, the domestic violence classes taught her to leave someone when they hit you, and Healthy Relationships taught her to communicate with her partner, and she received advice from counseling.

Yelinek acknowledged they were no further instances of domestic violence after the July 2013 incident. Pavel testified that respondent responded appropriately to this latest incident by leaving the home and going to a domestic violence shelter. Carmen McMillan, a family specialist who provided in home services to respondent after the child's removal in July 2013, testified that she also believed that respondent appropriately sought help at a domestic violence shelter after the incident. Yelinek also felt that respondent acted responsibly by moving from the family home.

Pavel testified that she began more counseling sessions with respondent in October 2013. Respondent informed Pavel that she had ended the relationship with Williams. Pavel felt that respondent seemed committed to having Williams out of her life. McMillan was also under the impression that respondent was no longer in a relationship with Williams. Johnathan Manke, respondent's brother, also confirmed that respondent had ended her relationship with Williams.

McMillan testified that she felt that respondent had made progress in recognizing relationships that could be problematic to the family structure. McMillan felt that respondent would use the skills she learned about healthy relationships and what was appropriate for her child. She deemed respondent's current home environment "extremely appropriate" and said there was no domestic violence occurring there.

¹ William's termination hearing was adjourned; he later voluntarily released his parental rights to the minor child.

Regarding income and housing, the evidence established that prior to July 2013 respondent had inconsistent employment and relied financially on Williams. The evidence established that respondent was employed for about two months at Innovative Services around the time the case first started in 2012 and earned about \$700 every two weeks, but then she was fired for not making quota. Around this time, she resumed her relationship with, and started living with, Williams, who was employed as a painter. The couple moved into a house together in August 2012. Respondent was still not employed when the child was returned to her care in April 2013; she was still residing with Williams and he was working. This record thus shows that respondent initially failed to maintain employment and independent housing and instead relied on Williams.

However, the evidence also established that respondent obtained employment after ending her relationship with Williams. As the court noted, respondent's employment after she ended her relationship with Williams was initially rather sporadic; Yelinek testified that respondent had five or six employers since her separation. According to McMillan, after the child's removal in July 2013, respondent held a part-time job at Arby's, was placed at HP Pelzer for a week by Staff Works, and then got a call from Environmental Plastics Corporation for a higher paying job, so she took that. At the hearing, respondent explained that she had recently obtained full-time employment at Lite Mold, a factory in St. Clair, where she made \$8 per hour. She had been working there for two weeks. Respondent also testified that she worked one day a week at Sam's Club, where she made \$11 per hour. Pavel acknowledged respondent's history of sporadic employment but felt that respondent's job situation had stabilized, and she did not believe that employment was an area of concern.

Respondent presented evidence that since September 2013, respondent had been residing in her own two-bedroom apartment, which she was renting for \$600 per month. Respondent presented her lease, as well as rent receipts showing that she paid her rent from October 2013 through December 2013. Yelinek had no issues with the appropriateness of respondent's current home and, to the best of her knowledge, respondent lived alone. She testified that the physical condition of respondent's prior home with Williams had also been appropriate. Pavel also stated that she did not believe that housing was a concern. McMillan also felt that respondent's home was appropriate and she had no reservations about sending the child to live there. Finally, respondent's brother testified that respondent's home was clean and appropriate.

The trial court terminated respondent's parental rights, adopting the referee's recommended findings of facts and conclusions of law, which stated in relevant part:

The original petition was based upon instability in housing and employment for respondent mother, and an unstable relationship between parents and resulting domestic violence between them. All available and appropriate services were provided to the respondent mother, including parenting classes, life skills referral and services, psychological assessment, domestic violence and anger management classes, counseling, parenting time, monthly home visits and case management. Respondent mother completed the services and [the child] was returned home on April 29, 2013. Approximately 8 days after being returned home, it was found that due to conflict between the parents respondent mother left the home with Rieleigh and her whereabouts were unknown for 3 days. Although the parents stated they would live apart, respondent mother returned with [the child] to reside in Mr. Williams['s] home. Just over a month later, Mr. Williams was arrested and

jailed for Domestic violence after he pulled Ms. Manke out of the bathtub by her hair and forced her out of the house. There is no question that the unstable relationship and domestic violence between the parents which resulted in the original petition, has continued unabated in this case. But despite a very unstable and rocky relationship, Ms. Manke remained with Mr. Williams, exposing [the child] to the instability and domestic violence. This is a case in which respondent mother was unable or unwilling to demonstrate that she benefited from the services provided to her during the temporary wardship. There are no further or additional services which the court finds would be helpful. The evidence is clear and convincing that the grounds for termination of the parental rights of respondent mother have been established pursuant to MCL 712A.19b(3)(i)(ii) [sic], (g) and (j).

* * *

[The child] is a three year old child who was originally removed from the parental home in May, 2012, due to instability and domestic violence. Other than [sic] the approximately two months [the child] was returned home, she has been in foster care for almost a year and a half. There was no evidence presented to establish a significant bond between respondent mother and [the child].

The court notes that [the child] is currently placed in relative foster care with a paternal cousin. There was no evidence presented of any significant or important relationship between respondent mother and the relative placement. Given [the child's] young age of (3), the court finds that a guardianship would not provide the necessary permanence and stability that is needed for a child of her age.

The court finds by clear and convincing evidence that respondent mother has not established housing, employment or a relationship with the father that would enable and promote permanence and stability for [the child]. It does not appear that providing more time for services would make a difference in this case. The court therefore finds that termination of parental rights of respondent mother, Jaclynn Manke, is in best interest [sic] of the minor child pursuant to MCL 712A.19b(5) and MCR 3.977(E)(4).

This appeal followed.

II. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a

definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

III. ANALYSIS

Respondent mother's parental rights were terminated under the following subsections of MCL 712A.19b(3):

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

We conclude that the trial court clearly erred in finding clear and convincing evidence supporting termination under any of these subsections. The court assumed jurisdiction over the child because respondent had instability in housing and lack of income, despite the provision of services, and because of incidents of domestic violence with the father. These conditions had been rectified by the time respondent's parental rights were terminated.

Regarding domestic violence, the evidence established that there were no further instances of domestic violence after the July 2013 incident, to which respondent reacted appropriately. Following the incident, respondent went to a domestic violence shelter and then moved out of the family home, ultimately obtaining her own two-bedroom apartment in September 2013. Respondent reported the incident to the police and participated in Williams's prosecution. By all accounts, respondent had ended her relationship with Williams, and her

therapist felt respondent was committed to that. The family specialist who provided services to respondent after the incident felt respondent had benefitted from services and made progress in recognizing relationships that could be problematic to the family structure and that she would use the skills she learned about healthy relationships to do what was appropriate for her child. She deemed respondent's current home environment "extremely appropriate" and said there was no domestic violence occurring there. She had no concerns about returning the child to respondent's care.

Respondent's lack of income and instability in housing were other reasons that led to the court taking jurisdiction over the child. For much of this case's history, respondent indeed failed to maintain employment and independent housing, and instead relied on the child's father to support the family. However, the evidence established that respondent obtained employment and independent, appropriate housing after ending her relationship with Williams.

With regard to subsection (3)(c)(ii), the court failed to specify what "other conditions" existed, and our review of the record does not reveal any other conditions respondent failed to rectify after receiving recommendations, notice, and a hearing. Furthermore, contrary to petitioner's claim, respondent's association with "undesirable" people, such as her mother and brother, does not permit termination under subsection (3)(j), given the lack of detailed information concerning how these individuals' backgrounds would result in them being a danger to the child.² Finally, petitioner's assertion on appeal that accidental injury to the child may occur from exposure to "questionable" individuals lacks factual and legal support.

"Clear and convincing evidence" is "the most demanding [evidentiary] standard applied in civil cases," and has been defined by our Supreme Court as evidence that produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. [*In re Martin*, 450 Mich 204, 228; 538 NW2d 399 (1995) (quotation marks and citation omitted).]

We do not find that such a demanding standard has been met in the instant case. The record shows that respondent was employed and had obtained appropriate housing at the time of the termination hearing, and that she had responded appropriately to Williams's latest act of domestic violence, even participating in his prosecution for that act. The record further reflects that respondent not only participated in but benefited from the services provided to her by petitioner.

For the foregoing reasons, we reverse the trial court's finding that the statutory grounds were established by clear and convincing evidence. Because we hold that statutory grounds permitting termination of respondent's parental rights were not established by clear and convincing evidence, we do not reach the trial court's best-interest determination; however, we do note that the record does not support the trial court's conclusion that "no significant bond"

² We note that the record does indicate that respondent briefly dated a registered sex offender. However, respondent testified that she was unaware that he was a registered sex offender and that, as soon as she found out, she stopped seeing him.

exists between respondent and her child. The referee's opinion regarding the parental bond appears to be based solely on the length of time the child was in foster care. Respondent testified that she loved her child and was bonded with her; moreover McMillan and Yelinek both testified that respondent was bonded with her child.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly